

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. CV-06-0720 MV/LFG
CR-04-1998 MV

CARLOS MARTINEZ-NARVAEZ,

Defendant.

MEMORANDUM OPINION AND ORDER

This matter comes before the Court on a letter from Defendant (CV Doc. 1; CR Doc. 26) filed August 1, 2006, that the Clerk entered on the docket as a motion under 28 U.S.C. § 2255.¹ On March 4, 2005, the Court entered judgment on Defendant's conviction and sentence. Defendant did not file a notice of appeal. He now asks the Court to modify his sentence under the Supreme Court's ruling in *United States v. Booker*, 543 U.S. 220 (2005). The record reflects that the parties briefed the question of *Booker*'s impact on Defendant's sentence, and he was sentenced after the decision in *Booker*.


The motion must be denied as a jurisdictional matter. After a judgment of conviction is entered, the Court's authority to modify a sentence is limited to specific statutory authorization. "We have explained that " '[a] district court is authorized to modify a [d]efendant's sentence only in specified instances where Congress has *expressly* granted the court jurisdiction to do so.' " *United States v. Price*, 438 F.3d 1005, 1007 (10th Cir. 2006) (emphasis in original). Defendant asks only

¹ The Clerk's automated case-opening system categorizes all motions challenging federal convictions or sentences as if they were filed under 28 U.S.C. § 2255.

for leniency, and thus the motion is not brought under any applicable statutory provision for postjudgment modification of a sentence. *See, e.g.*, 18 U.S.C. § 3582. Defendant's motion will be denied.

IT IS THEREFORE ORDERED that Defendant's letter (CV Doc. 1; CR Doc. 26) filed August 1, 2006, construed herein as a motion to reduce sentence, is DENIED; and this civil proceeding is DISMISSED;

IT IS FURTHER ORDERED that, in accordance with *United States v. Espinosa-Talamantes*, 319 F.3d 1245, 1246 (10th Cir. 2003), Defendant is hereby NOTIFIED that a notice of appeal from an order denying a motion in a criminal proceeding must be filed within ten days after entry of the order.


UNITED STATES DISTRICT JUDGE